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THE BALLOT AND OTHER FORMS OF VOTING IN THE ITALIAN COMMUNES

IN all political communities where the franchise has been granted to any considerable part of the people the process of voting, of arriving at a decision on some controverted subject, has occupied no small part of the time of the constitution-makers. Every American, every Englishman knows, almost by intuition, what we mean by *viva voce* voting, by division, by the ballot. Most students of history know, in a general way, that many of these forms of voting were in common use among the Greeks and Romans, but few men are aware that after the decline of the states of antiquity nearly all the forms of voting lay in abeyance for six or seven centuries, to be revived or rediscovered by the communes of northern Italy. Much controversy and discussion has arisen over the history of the ballot and other forms of voting in modern times. The present writer, however, sees no reason to doubt that the revival of all forms of voting used in modern times is due to the activity of these towns of Italy.

Among the Greeks,¹ as we should expect, the highest development of electoral processes was attained by the Athenians. In Sparta, where constitutional development was much less marked, the modes of voting were much cruder and, as Aristotle says, almost childish.² At Athens, for legislative purposes, the ordinary process of voting was by show of hands,³ but in special cases where the

¹ For general treatises on the whole subject of Greek modes of voting see K. F. Hermann, *Lehrbuch der Griechischen Alterthümer*, 6th ed., 1889-1892, I. 155 ff., 478 ff.; G. Gilbert, *Handbuch der Griechischen Staatsalterthümer*, I. 52-57, 240, 295-347 *passim*; and I. Müller, *Handbuch der Klassischen Alterthumswissenschaft*, IV. pt. I., 2nd ed., 1892, pp. 82-84, 152-176. For Athens see J. W. Headlam, *Election by Lot in Athens*, 1891.

² Aristotle, *Politics*, II. 9.

³ Aristotle, *Athenian Constitution*, Chap. 43.

questions to be settled were of greater weight, cases such as the granting of citizenship, the removal of civil disabilities, the ostracism of a citizen, the assembly voted by ballot.¹ In the election of officials the Athenians resorted almost entirely to the use of the lot; but military officers and a few other officials whose duties were largely technical or whose office required special training, were chosen in the general assembly (*Ecclesia*) by show of hands.²

In Rome, the processes of voting were even more elaborate than in Greece.³ In the senate, after the question had been stated, the first step in the deliberation partook partly of the nature of a debate, partly of the nature of an informal vote,⁴ each senator declaring his opinion, with or without statement of his reasons. When this process was completed, the chairman summed up the debate and led the assembly on to a vote. The vote was always taken by division (*discessio*); the presiding officer, after putting the question, required the affirmative to take places on one side of his rostrum, the negative on the other. When the division was complete the president announced the result: *Haec pars major videtur*.⁵

In the assemblies where the vote was cast not by individuals, but by voting units, the *Curiae*, the centuries, or the tribes, the process was necessarily more complicated. After discussion of the question had taken place, or the names of candidates who had offered themselves for election had been presented to the assembly, the voting units were assigned to their booths (*saeptae*); when all the voters had been gathered, tellers were assigned who took their station at the outlet (*pons*) of the booth. Then each man, as he stepped forth, voted either for or against the proposition, and the teller pricked the vote on one or the other of the two tablets which he held as tallies; or the voter, as he stepped forth, gave in the name of his candidate, and the teller recorded it on the tablet on which the name of that candidate was inscribed. When this individual vote was accomplished the tellers handed in the results to the president, who in turn announced the results to the assembly.⁶

This was the regular and invariable process down to the last half of the second century before Christ. In the years between 140 and 130 B. C., a series of laws were passed which introduced the

¹ G. Gilbert, *Handbuch der Griechischen Staatsalterthümer*, I. 332, 346.

² Aristotle, *Athenian Constitution*, Chap. 43.

³ For general treatises on the whole subject see: T. Mommsen, *Römisches Staatsrecht*, 1887-1888, III. 389-410, III pt. 2, 962-1003; I. Müller, *Handbuch der Klassischen Alterthumswissenschaft*, 2nd ed., IV. pt. 2, 1893, 124-127, 148-167; I. Gentile, *Le Elezioni e il Broglio nella Repubblica Romana*, 1879.

⁴ Mommsen, III. 962 ff.

⁵ Mommsen, III. pt. 2, 991-992.

⁶ *Ibid.*, III 397 ff.

ballot, first in the election of magistrates, and later in legislative proceedings. The mode of voting from this time forward was as follows : As the voters entered the booths they were given ballots (*tabellae*). These ballots differed according to the subject under discussion : if the vote to be taken was on some law the tablets were marked VR (*uti rogas*) and A (*antiquo*); if the assembly was gathered for an election, the tablets were plain, and the voters inscribed on them the name of the candidate for whom they wished to vote. Each citizen as he passed out of the booth of his voting unit deposited his ballot under the supervision of tellers (*rogatores*) and watchers (*custodes*) in baskets. When the voting was completed the baskets were carried off to some special place called the *diribitorium*, where they were emptied. Here the ballots were sorted and counted, and the results recorded. When this was done the result was announced as under the old method.¹ With the establishment of the empire, the election of magistrates and whatever legislative functions the assemblies had retained passed over to the senate ; along with these functions the senate adopted the ballot, which down to the time of Tiberius had never been used by that body.² Freedom of action, however, was lost to the Roman people, and electoral and legislative processes inevitably decayed till they were lost in the night of the fifth and sixth centuries of our era.

Just when these processes were revived the writer is not now prepared to say. That all of them had attained to full vigor by the end of the thirteenth century is, however, established beyond the shadow of a doubt by our sources.

The commonest form of voting in the Middle Ages, for a long time probably the only form of voting, was the *viva voce* vote. In all except the smallest bodies any other form was practically impossible. No such elaborate machinery for recording and counting votes as modern assemblies have evolved existed, and further, the expression of opinion by the mass of men was a much more perfunctory matter than it is at present. In large bodies like the *Parlamento*, the general assembly of the Italian communes, discussion was impossible ; the people when they met were called upon to listen to the words of chosen orators, and when the question had been stated to them in this way all that was left for them to do was to approve or disapprove by such methods as a crowd commonly uses. If they were satisfied they signified their approval by shouts of commendation, if they were dissatisfied they murmured or cried down the speaker, or even at times proceeded to violence and in extreme cases to bloodshed. Whatever the theory of the *Parlamento* may have

¹ Mommsen, III. 400 ff.

² *Ibid.*, III. pt. 2, 992.

been, in practice it acted in the way described. At its best the body had all the defects of a popular assembly in which no attempt was made to allow due time for careful preparation.¹ The inefficiency of such a body became more and more manifest as the state developed, and in the thirteenth century its functions are absorbed by the smaller councils and its meetings become more and more occasional. In the smaller councils the ordinary business must likewise have been transacted very largely by *viva voce* voting, though the tendency to restrict this method of voting grows strong enough in the second half of the thirteenth century to produce positive legislation against it. Evidences of this fact are to be found in the statutes of Parma² and Ferrara³ passed in the latter half of the century and in the statutes of Ivrea contained in the code of 1328.⁴

In place of the *viva voce* vote the communes begin to use the various modes of voting common in modern assemblies. Scattered through the statutes of the cities we find references to the division, to the rising vote, and finally to the ballot.

Evidences of the division and the rising vote, while they are not very numerous, extend over a territory wide enough to indicate that they were known and probably used in most of the assemblies of the communes. Just what the process of division was is not entirely clear. In all probability, however, it approximated the earlier Greek and Roman practice where an actual division of the body was made. Thus the statutes of Parma speak of a vote taken by dividing the assembly *per medium palacium*,⁵ the statutes of Novara of a *partitum ab uno latere ad aliud*.⁶ That the process was already well known when these statutes were passed, is apparent from the fact that no explanation is given of the mode in which the division is to be accomplished; the name sufficed; and consequently we are left in the

¹ For a general description of the *Parlamento* see almost any manual of medieval Italian institutions. A very good article is to be found in G. Rezasco's *Dizionario del Linguaggio Italiano Storico*, 1881, pp. 752-754, where numerous references on the subject are given. For more exact information on the assembly in particular cities see Davidsohn's *Geschichte Florenz*, 1896, pp. 74-76; Caro's *Verfassung Genuas zur Zeit des Podestas*, 1891, pp. 24-28.

² "Capitulum quod aliquis officialis communis non eligatur in aliquo consilio generali vel alibi ad vocem et Potestatis teneatur non permittere aliquem eligi, nec eciam nominari ad vocem et si contra factum fuerit electio nulla sit." *Statuta Communis Parmae* in *Mon. Hist. Parm.*, II. 47. See also, *ibid.*, I. 20.

³ *Statuta di Ferrara dell' Anno 1288*, Liber II., c. 5.

⁴ *Statuta Eporediae*, in *Mon. Hist. Patriae*, LL. II. 1116.

⁵ *Stat. Com. Parmae*, in *Mon. Hist. Parm.*, II. 57.

⁶ *Stat. Com. Novar.*, in *Mon. Hist. Patr.*, LL. II. 556. It is interesting to note that this statute forbids the use of the rising vote in all assemblies and prescribes the division for exclusive use. "Statutum est quod aliquis rector civitatis Novarie in consilio majori vel privato non possit nec debeat facere aliquam partitam sive partitas super aliquo modo sedendi vel levandi, sed faciat ipsam partitam sive partitas ab uno latere ad aliud."

dark as to whether the vote was taken by tellers as the house divided itself, or whether a mere count of heads was considered sufficient. Whether all members were required to vote, whether any checks upon possible fraud were used, and all other questions of detail are left entirely unanswered by the statutes.

Evidences of the rising vote are more copious. Comparatively numerous references to this form of procedure are to be found in the statutes; still many questions as to the process of taking the vote are left open by the brevity with which the statutes describe it. The procedure is usually spoken of as the *partitum ad sedendum et levandum*,¹ and the phrase seems to indicate that the vote was similar to our modern rising vote, first one side and then the other rising in response to the call of the chairman.² That this was the process is, however, open to some doubt; in a decree of the commune of Brescia the procedure is briefly described, and from the language used it is possible to account for the phrase *ad sedendum et levandum* by supposing that the question which had been put to an informal vote *ad sedendum* was put a second time more formally *ad levandum*.³ Or we may conceive that instead of requiring both parties to rise, as is the modern practice, only one side, either the affirmative or the negative, was required to rise, those remaining seated being presumed to vote contrary to those who rose. That this was the practice is distinctly stated by a treatise on the Florentine form of government known as the *Discorso sulle Governo di Firenze*. In this treatise the author declares that the question was put only once; those favoring the proposition retained their seats, those opposing rose.⁴ If only one side rose, as is stated here, the scheme contemplated that all members of the assembly should be forced to vote, or it was so constructed that the affirmative should have all the benefit of the members who had no opinions on the subject under discussion. In more modern times the rising vote allows all members who have no desire to vote on either side the alternative of retaining their seats during both calls of the chairman, thus avoiding any registration of their opinions.

¹ See *Stat. Com. Parm.*, in *Mon. Hist. Parm.*, II. 52, 57; *Stat. Com. Novar.*, in *Mon. Hist. Patr.*, LL. II. 556; Gherardi, *Consulti di Firenze*, introd., p. xiii.

² Gherardi (introd., p. xiii) so interprets the phrase. He declares: "ma chiaro apparisce, s' io non m' inganno, che la votazione constava, perdir cosi, non di uno solo ma de due successivi e opposti atti dei consiglieri, che quelli cioè che al primo invito si erano alzati, poniamo per approvare, al secondo restavano seduti."

³ "Item quod Potestas. . . teneatur et debeat facere partitam revolvendo eam, ita quod illud partitum quo semel posuerit ad sedendum iterato ponat ad levandum et quod solum illud partitum reformetur . . . quod obtinet in revolutione." *Stat. Com. Brix.*, in *Mon. Hist. Patr.*, LL. II. 1584 (101).

⁴ "Il palese si faceva a sedere e rizzarsi . . . il sedere e rizzarsi facevansi immediatamente l' uno dopo l' altro. Il sedere favoriva, il rizzarsi disfavoriva." *Discorso*, etc., Appendix II., in Capponi, *Istoria di Firenze*, I. 457-458.

The discussion of the processes of voting in the communes has so far been confined to the deliberative side of the assemblies. These councils, however, like the old Roman *Comitiae*, possessed the electoral as well as the legislative franchise, and it is in the exercise of their functions as electors that we find the greatest development of voting procedure. All this development had, of course, two great objects in view, order and secrecy. The questions of policy or government that the councils were called upon to settle were ordinarily not of such a nature that the passions of men were aroused to a great extent, but in Italy, where office-holding, far from being the burden that it was in the boroughs of England in the Middle Ages, was a privilege as highly regarded as it is among the citizens of a modern state, elections aroused men to a display of passions that we can scarcely understand. Toward the obtaining of office and the control of the government much of the energy of the great parties in the communes was directed. Government positions were contended for with as much vigor as they are to-day; the only difference being that men in the twelfth and thirteenth centuries were much more ready to proceed to violence and bloodshed than they are in the nineteenth, and consequently the results of this rivalry were much more visible. The great difficulty in almost all assemblies in the Middle Ages was that on all questions vital enough to cause a division of opinion the ultimate appeal was sure to be to force; men who failed to agree with the majority were given no chance to record their opinions, were not allowed to fight out their battles by deliberative means, but were coerced at once and for all time to submit to the will of the majority. Even the majority was only too often the result of the armed preponderance of a few men over the mass of the people who did not dare to oppose them. Under the communal organization such a state of affairs could not long exist, and the twelfth and thirteenth centuries mark the growth of a series of regular deliberative and elective forms designed to overcome these elements of disorder. The statutes are full of decrees looking toward the reduction and the punishment of all sorts of violence and all sorts of interference with the full exercise of personal liberty.

As to the particular precautions which were taken to prevent fraud and coercion, these will appear as we discuss the processes of election provided by the statutes of the various communes. If we should generalize on these processes we should find that they can be grouped under four heads, namely: (1) election by some external authority, election delegated by the commune to some individual or corporation having no direct interest in the welfare of the body

politic; (2) indirect election, in which the electors do not themselves choose among the candidates but name electors who in turn select the officials; (3) election by lot; (4) election by ballot.

First as regards the election by some external authority. This method, while it was never recognized by any commune in full possession of its municipal rights as a regular mode of election, was, nevertheless, repeatedly adopted as a last resort when party feeling ran so high that choice by the burghers in any regular way was impossible. In passing it may be observed that the institution of the *Podestà*, adopted universally in the latter half of the twelfth and the beginning of the thirteenth century, was in part at least an effort to find a means of overcoming the intense rivalry among the parties in the communes.

Probably the commonest form which the phenomenon of delegated election takes is that where the commune appeals to some individual or group of individuals to choose its magistrate. In Piacenza, for instance, in 1221 Cardinal Ugolino of Ostia in his endeavor to bring the *Milites* and *Populi* to an agreement set up, with the consent of both parties, Otto Mandello, a citizen of Milan, as *Podestà*; again in 1226, the *Podestà*¹ of Milan, Guazone Ruscha, was called upon to settle the disputes of the factions and gave them a Milanese as chief executive;² in 1236 the experiment was made a third time, Cardinal Jacobo de Pecoria acting as mediator and choosing Rainerio Zono of Venice.³ Another case of the same kind occurred in Reggio in 1250 when the citizens sent to Ezzelino da Romano asking him to send them a governor. In response Ezzelino settled upon Ugolino de Sancta Juliana as *Podestà* for Reggio.⁴ Such cases are very common; often, however, it is hard to distinguish between coercion on the part of a powerful lord like Ezzelino da Romano or Azzo d'Este and a free delegation of power by the commune.

A peculiar case of delegation of the right to elect a magistrate occurs in a document dated March 6, 1189, in which a small town, Buonde de Porcile, in the Veronese district, delegates to five *Juratos Veronensis Canonice* the power to designate the person who shall choose their magistrate. These five *Jurati* determine upon Adrian, archpresbyter of the cathedral of Verona, and thereupon the election is delegated to him by the town.⁵ It is possible that we are here in presence of a commune dependent upon the cathedral chapter of

¹ *Johannis de Mussis Chron.*, in Muratori, *Script. Rerum Ital.*, XVI. 459.

² *Ibid.*, 460.

³ *Ibid.*, 462-463.

⁴ *Memor. Poles. Regiensis*, in Muratori, *Script. Rerum Ital.*, VIII. 1117.

⁵ *Archivio Veneto*, XXXIV. 171.

Verona. Such cases are common enough, but if this is the state of affairs the document gives no evidence of the fact. It reads like the independent act of a free commune.

In most cases, when the towns were unable to settle their internal difficulties, they appealed to the clergy. When we come to investigate the forms of election we shall see that the clergy were often nominated by the statutes to preside over the elections. We have already noted how the city of Piacenza twice called in a cardinal to compose the hostilities that were going on in the city, and we have seen how the burghers of Buonde de Porcile called upon the canons of the cathedral at Verona to conduct their election. Other examples are numerous: in 1256 the two parties in Milan almost came to blows over an election, and only by allowing four monks, called in for the purpose, to act as electors did they succeed in averting a crisis.¹ Nor is this an exceptional case; others of a similar character occur in other communes.

Another practice, and one much more elaborate than any of those already given, was for the commune to send directly to another town and ask for a chief executive to be chosen as the council of this town saw fit. As an example of this, the choice of Brancalone del Andalo of Bologna as *Senator* of Rome in 1252 is perhaps the most famous. In 1251 and 1252 the city of Rome was in a state of great disorganization; the pope, Innocent IV., had been absent from the city since 1244; first one faction and then another had controlled the city; all things were in an evil condition.² Under these circumstances the citizens turned to Bologna and asked that a chief executive be sent them. In answer to this request Brancalone del Andalo, a man of great force and remarkable executive ability, was chosen by the general council of Bologna, and, after receiving hostages from the Romans, journeyed to the city as chief magistrate.³ This case is so typical that it is useless to multiply examples, though they are common enough.⁴

The election of any official by an external authority was, as stated above, not a process recognized by statute; it was resorted

¹ Galv. Flamma, in Muratori, *Script. Rerum Ital.*, XI. 685-686; *Annal. Mediol.*, *ibid.*, XVI. 658.

² Gregorovius, *Geschichte der Stadt Rom*, bk. IX., c. 6.

³ Cantinelli, *Chron.*, Muratori (Mittarelli), p. 236; Savioli, *Annali Bolognesi*, III. pt. 1, 258-259; Gregorovius, V. 273-274. Cantinelli says under the year 1252: "hoc anno commune urbis Romae misit legatos et ambaxiatores suos ad civitatem Bononie, quod mitteret Romam unum probum et electum virum de Bononia pro senatore, qui urbem pacifice gubernaret. Et tunc in generali consilio communis Bononie ad scrutinium electus fuit D. Brancaleonus de Andalo qui illuc ivit et urbem honorifice et potenter rexit quinque annis."

⁴ See for example: *Ann. Mediol.*, in Muratori, *Script. Rerum Ital.*, XVI. 658; Galv. Flamma, *ibid.*, XI. 686; Gregorovius, V. 352; *Stat. di Vicenza*, introd., p. xlii.

to only when conditions in the city made the election by the regular and legal method impossible. Under ordinary conditions all elections were conducted either by indirect election, by lot or by ballot, or by a combination of two or more of these processes.

The purpose of indirect election is most manifest. Where a large body of men would find it absolutely impossible to conduct the business of choosing among candidates, a smaller number of men would find it much easier. Indirect election involves some other process as well. The body which chooses the electors must of necessity use one of the forms of voting known to us; and the electors in turn must use some process in selecting among the candidates. For the present we may, however, confine ourselves to a discussion of the problems that indirect election itself presents.

How early this system was adopted it is hard to say. Nevertheless, in almost the very earliest statutes that are preserved to us we begin to get evidences of the indirect election. In Genoa, for instance, in a charter of the year 1147 electors of consuls and electors of electors are mentioned,¹ and from the *Breve della Compagna* for 1157 some idea of the process in these early times may be gathered.² The document offers so many questions, however, and so many descriptions of the indirect election as conducted in later times exist that it is better to pass it by and to describe the process as set forth in some later source.³ Thus in the statutes of Vicenza the process is described as follows. The *Podestà* and council of elders choose once a year five men from each quarter of the city. The twenty thus chosen with the *Podestà* formed an electoral college and chose four hundred good and true men, one hundred from each quarter, to act as the greater council for the succeeding year.⁴ In the election of the lesser council of forty exactly the same process was followed, except that instead of choosing five electors from each quarter only two were chosen.

What has been described as taking place in Vicenza took place in other communes in northern Italy in the middle of the thirteenth century. The statutes vary in minor details, but in the broad outlines they are the same. Occasionally we come across details that are interesting enough to be noted; thus in the commune of Parma, according to the statute of 1233, it was the rule that instead of the electors acting together as a college and together choosing enough

¹ *Mon. Hist. Patr., Liber Jurium Jan.*, I., No. 134, p. 131. "Electores consulum et electores electorum" is the phrase used.

² *Breve della Compag.*, in *Atti della Soc. Ligura*, I, 176, 185.

³ On the whole subject of elections in Genoa see G. Caro, *Genua zur Zeit des Podestas*, pp. 34 ff.

⁴ *Stat. Com. Vicen.* (ed. F. Lampertico), p. 71.

of the candidates to fill the offices, each elector as an individual chose a certain number of men who were then considered legally elected.¹ In Ivrea, the electors who were chosen by lot were forbidden to retain the lot which they had drawn. Instead of acting themselves they were required to pass it on to a second person, the avowed purpose of the statute being to prevent fraud.² That the object of this process was peace and quiet at the election appears very clearly from the careful restrictions put upon the electors. When election by lot has been discussed more will be said of the precautions with which the statutes hedged in the electors after they had been chosen ; at present it is sufficient merely to call attention to the stringent oath that was required of the electors as early as the end of the twelfth century in Pistoia.³ They were required to swear that they would form no combinations, would not yield to any power outside the city, would neither take nor give any bribes or promises, and would make no oaths or agreements, in short, would do nothing to hamper in any way their action as free agents. They promised to the best of their ability to elect the most fit and powerful man possible, the man who would serve with the greatest honor and credit to the city. This oath, strong as it is, is only an example of what is constantly demanded of the electors later. Purity of elections is the constant aim of these early constitution-makers.

Of the number of electors little need be said. In the earliest days, when the electors were possibly chosen by *viva voce* vote, the number was comparatively small. In Genoa in 1137 the number seems to have been six.⁴ In Pisa and Parma in the twelfth century the number was even smaller, three being mentioned as regular.⁵ In later years when the electors were chosen by lot or by ballot the number was considerably increased, twenty, thirty and even forty being more common than three or six.⁶

In our earliest sources nothing is said of the actual procedure at elections ; in all probability the assemblies and the electors in these early years still retained the *viva voce* vote for purposes of election as well as for purposes of deliberative voting. In the thirteenth century, when the sources begin to flow more freely, the com-

¹ *Stat. Com. Parm.*, in *Mon. Hist. Parm.*, I. 20.

² "Ita quod aliqua fraus inde non possit." *Stat. Epor.*, in *Mon. Hist. Patr.*, LL. I. 1115. See also *ibid.*, pp. 1107, 1124.

³ *Stat. Civit. Pist.*, in Muratori, *Antiq. Ital.*, IV. 534.

⁴ *Ann. Januen.*, in *Mon. Germ. Hist.*, SS. XVIII. 186.

⁵ *Breve Consulum Pisanae*, in Bonaini, *Statuti Pis.*, I. 25 ; *Stat. Com. Parm.*, in *Mon. Hist. Parm.*, I. 20.

⁶ *Stat. Com. Bonon.*, in *Mon. Ist. di Romagna*, III. 19 ff ; *Stat. Com. Vicen.* (ed. F. Lampertico), p. 80.

monest, indeed for at least half a century the only mode of election spoken of is the lot. The term most commonly used to describe the lots is *brevia*,¹ though the term *sortes* is not wanting. In the statutes of Brescia, for instance, the term *sortes* is used almost exclusively,² while in the statutes of Piacenza the two terms are used interchangeably.³

The question of the origin of the use of lots in elections need not detain us long. When the towns first began to use them it is impossible to say. It may be that the introduction of the lot and of indirect election was coincident, but if we assume, as seems likely,⁴ that the indirect election preceded the lot, we may assume that the indirect election, while it did away with some of the violence and corruption incident to direct elections, did not entirely remedy the evil. Bribery and corruption, intimidation and violence still continued, and the further step to the choice of electors by lot was introduced. Where the idea of using the lot in elections came from is a question that needs little investigation. The practice of casting lots is as old as the world's history, and when the necessity of a new system of choosing electors arose, the communes must have found on all sides references to this ancient system, the adoption of which seemed to point to a remedy for the evils from which they were suffering.

As to the machinery which the communes used in casting lots, we are fortunately furnished by several of the codes with elaborate descriptions of the procedure. Thus according to the statutes of Bologna for 1245-1250 the election of special counsellors was accomplished as follows. The electoral body, the gild, was assembled by the masters; the electors, nine in number, were chosen by lot. The lots were drawn from a cap by a small boy and given to the members of the gild. From the drawing the masters were excluded since they were forbidden to act as electors. Naturally those who received the marked lots acted as electors.⁵

In Parma much the same practice was in vogue, but the language

¹ If Caro had had a wider acquaintance with Italian sources he would not have made the mistake of supposing that the term *brevia* used repeatedly in reference to elections in Genoa meant a formula for the oath which the electors were required to take. Even the sources for the study of elections in Genoa make it clear that the word *brevia* means a lot; in at least one instance the annalist of the city uses the expression *brevia sive sortes*, thus indicating that the terms are similar. *Mon. Germ. Hist.*, SS. XVIII. 179. See Caro, *Genua zur Zeit des Podestas*, pp. 35 and 91-92, notes 24-28.

² *Stat. Bresciana*, in *Mon. Hist. Patr.*, LL. II. 1584 (27) ff.

³ *Stat. Com. Placent.*, in *Mon. Hist. Parm.*, V. 235; also *Stat. Com. Novariae*, in *Mon. Hist. Patr.*, LL. II. 560.

⁴ Likely because the evidences of the indirect election antedate those of the election by lot by several decades.

⁵ *Stat. Pop. Bon.*, in *Mon. Ist. di Romagna*, I. 9.

of the statutes makes it much clearer that the purpose of the lot was to avoid fraud and violence. Indeed the rubric of the statute reads: "*Capitulum ad evitandum quod aliquis qui non sit de consilio generali debeat stare ad sortes recipiendas, et ad evitandum contentiones super hoc.*"¹ Here instead of having one cap, two are used. As the names are called, the councillors are required to answer and leave the chamber, in order that no one may try his chance twice or answer for an absent member. During the drawing the members are forbidden to stand near the chairman's platform under penalty of a heavy fine.

Under the statutes of Brescia, which bear a later date, the practice is much more elaborate than either of those described. The names of the councillors were placed in a bag and as many lots black and white (*sortes nigrae et albae*) as there were names were to be provided by the tellers. The tellers, two Minorite friars and two Dominicans, were to mix the names and one by one the names and the lots were to be drawn. Whenever a black lot was drawn, one of the friars recorded the name of the councillor chosen and the quarter of the city from which he came. When the process was completed the names were read, and the list passed over to the chairman, and the electoral college was thus formed.²

Beyond a doubt the one thing that the communes were striving for was purity in elections. With this end in view the election was hedged in with all sorts of conditions. In Parma the precautions against repeating were elaborate.³ In almost all of the cities all persons not directly interested in the drawing of the lots were forbidden to come within three or four yards of the polling-place.⁴ In Bologna and Sienna the statutes decreed that the lots marked and unmarked shall be identical in form and substance, so that no one can discern the one from the other.⁵ In order to prevent connivance and collusion the electors were required to take strict oaths;⁶ with the same object in view, in many cities no two members of the same family could act in the same electoral college, nor could any elector vote for himself or for any member of his family.⁷ Most of all, however, the statutes insisted that the election should follow immediately upon the choosing of the electors.

In some towns the electors were required to give in their votes

¹ *Stat. Com. Parm.*, in *Mon. Hist. Parm.*, II. 39.

² *Stat. Com. Brix.*, in *Mon. Hist. Patr.*, LL. II. 1632.

³ *Stat. Com. Parm.*, in *Mon. Hist. Parm.*, II. 39.

⁴ See, for instance, *Stat. Com. Brix.*, in *Mon. Hist. Patr.*, LL. II. 1584 (200); and *Stat. Bonon.*, in *Mon. Istor. di Romag.*, III. 110-111.

⁵ *Stat. Bon.*, as above, 35-36; *Const. Com. Senarum* (ed. Zdekauer), 56.

⁶ *Stat. Pistor.*, in Muratori, *Antiq. Ital.*, IV. 534.

⁷ *Stat. Com. Bon.*, in *Mon. Istor. di Romagna*, III. 36, 38, 40.

openly to tellers appointed for that purpose.¹ In Brescia, for instance, the statute requires that the tellers, with the notaries of the *Podestà*, shall take their place at the voting-stand, and those who have received the lots shall require the notaries to write down the names of the persons whom they select as they advance, in turn, to the voting place. Each elector, after he sees that the notary has written down a name, shall require the tellers to read the name which has been written and the office to which the person designated has been elected. No one holding any office in the commune shall be present while the voting is going on.²

The more common practice, however, was for the electors to form themselves into a sort of conclave in which the election must be accomplished within a definite period of time, usually three days.³ In order to remove them entirely from outside influences, they were shut up in a room, removed from all communication with any members of the commune,⁴ and, if they failed to accomplish their task in the prescribed time, they were either dismissed⁵ or were forced to continue their deliberations on short rations⁶ till the election was accomplished. This procedure had been completed at least as early as 1223. In the annals of Piacenza for that year we find an account of a conclave held in that city for the election of a *Podestà*. Owing to the bitter hostility of the parties the electors were unable to come to any agreement, and the commune was forced to dismiss them and to choose a second set of electors to accomplish the task.⁷

At this point we come very near to a subject of considerable interest, namely, the connection, if any connection existed, between the development of papal elections and communal elections. Just as the twelfth and thirteenth centuries are the centuries in which the

¹ *Stat. Com. Parm.*, in *Mon. Hist. Parm.*, II. 39-40; *Stat. Brix.*, in *Mon. Hist. Patr.*, LL.II. 1584 (162-163).

² "Item quod quando eligantur officiales ad sortes precones debeant stare tantum ad parlatorium . . . et ille qui accipit sortem officialis debeat primo facere scribi per notarium potestatis officialem quem eligit et postea dicat et denuntiet preconem ut debeat nominare officialem quem eligit et ad quod officium electus sit . . . et quod nullus ministralis stet ad consilium quando dantur sortes." *Stat. Brix.*, as above, 1584 (163-164).

³ *Stat. Vicen.* (ed. F. Lampertico), 80; *Stat. Com. Placent.*, in *Mon. Hist. Parm.*, V. 216.

⁴ *Stat. Com. Bonon.*, in *Mon. Istor. di Romagna*, III. 44.

⁵ *Stat. Com. Bonon.*, as above; *Stat. Com. Placent.*, in *Mon. Hist. Parm.*, V. 216.

⁶ *Stat. Com. Vicen.* (ed. F. Lampertico), 80.

⁷ . . . "qui steterint in camera comunis pro potestate eligenda usque ad diem Sabbati proximum, non comedentes neque bibentes. Qui cum in electione potestatis se accordare . . . non potuissent," a new set of electors was chosen, "qui ea die in communis camera fuerunt pro potestate eligenda inclusi . . . qui steterunt in ipsa camera usque ad diem Veneris proximum. . . . Ea vero die divina misericordia concorditer elegerunt in potestatem communis Placentie D. Nigrinum Marianum." *Ann. Placent. Guelfi*, in *Mon. Germ. Hist.*, SS. XVIII. 438-439.

communes are most actively engaged in the perfection of electoral processes, so the papacy in these years was engrossed in providing a system of elections which should remove it from the numerous dangers which schisms and delayed elections were producing.

The papal conclave which exists to-day is the outgrowth of the activity of the papacy in the thirteenth century. The conclave in its present form owes its origin to the decree of Gregory X. passed at the council of Lyons in 1274. Since 1179, when Alexander III. had issued the decree requiring a vote of two-thirds to elect a pope, the tendency of papal elections had been toward regularity and purity; but during the days of Frederick II., whatever the purposes of the papacy may have been, the cardinals found it impossible to carry on their elections secretly and removed from outside interference. At several of the elections during this century it is probable that the cardinals endeavored to carry out the ideas of earlier popes and to hold their elections removed from all secular interference, but it is not till the year 1274 that the conclave becomes recognized as a part of the procedure necessary in the election of a pope. That the papal and the communal system owed much to each other is probable. That one is the outgrowth of the other is not likely. More probable is the supposition that both arose from the very natural desire to remove the electors of officials from the influences of intimidation and corruption.¹

The procedure followed by the electors in their secret meetings is nowhere described in the statutes of the earlier days. It is fair to presume that at first they voted much as they did in open council, the purpose of withdrawing them from the public being probably simply to remove them from external influences. In most cases the college acted, no doubt, quite informally, and the election was accomplished without serious difficulties. In cases where the electors failed to agree, however, especially when they were zealously attached to the different candidates, the dissensions and disturbances which had formerly involved the whole body of citizens or at least the council to which the election was entrusted, were now merely transferred to the smaller electoral college. That such divisions did take place is obvious from a glance at the history of the communes, and from the fact that the statutes required that the election be accomplished within a fixed time, and, in the third place, from the fact that the number necessary to a choice was set by the election decree. In Genoa the choice seems, as a rule, to have been a

¹ On the subject of papal elections see Hinschius, *Kirchenrecht*, 1869-1897, I. 239-294; Zoepfl, *Papstwahlen vom 11. bis zum 14. Jahrhundert*, 1871; Souchon, *Papstwahlen von Bonifaz VIII. bis Urban V.*, 1888; Sägmüller, *Papstwahlen von 1437 bis 1555*, 1890; Lector, *Le Conclave*, 1894, especially Chapters III. and IV.

unanimous one, though not necessarily so;¹ in Brescia and in Ivrea a two-thirds vote was necessary to a choice;² in Bologna the same proportion, twenty-seven out of forty, or thirteen out of twenty, was preserved;³ in other cities four-sevenths was the proportion.⁴ In all cases more than a mere majority was required to elect a candidate to office.

In some towns, instead of only one candidate, three were chosen: in such cases the procedure must of necessity have been different. In Vicenza, for instance,⁵ the electors were required to choose three candidates within three days, on pain of being deprived of food till they accomplished their task if they exceeded that limit. The names of the three were announced to the Council of Four Hundred "et in eodem consilio ad partitum ponantur cum tribus bus-solis ad ballotas," and he who received the most votes was called to accept the magistracy.

The phrase which I have just transcribed brings us to the most interesting part of our subject, the introduction and use of the ballot in the Italian communes. It is obvious that while the various amendments introduced into the procedure at elections so far described did much to remove the violence attendant upon the choice of candidates, while they made corruption and intimidation more difficult, still bribery and intimidation continued in large part unabated. A man who must vote openly in an electoral assembly was at the mercy of his companions. He might be threatened with punishment for an adverse vote by one man as well as by fifty, and in this respect the indirect election was still defective. Order had been procured or at least disorder had been minimized, but as yet the most essential element of pure elections, secrecy, was lacking. This element was introduced when the ballot was adopted by the towns for use in their elections and in their legislative deliberations. That this process of advance was at all regular, or even that men advanced from one step to another entirely conscious of the progress they were making, is not to be thought of. The fact remains, nevertheless, that between the beginning of the twelfth century and the end of the thirteenth the communes had moved onward from direct *viva voce* voting to the indirect election conducted under the secrecy of the ballot.

¹ *Ann. Januen.*, in *Mon. Germ. Hist.*, SS. XVIII. 159, 160.

² *Stat. Com. Brix.*, in *Mon. Hist. Patr.*, LL. II. 1584 (238); *Stat. Com. Epor.*, in *Mon. Hist. Patr.*, LL. I. 1107.

³ *Stat. Com. Bonon.*, in *Mon. Ist. di Romagna*, III. 19 ff.

⁴ *Stat. Com. Placent.*, in *Mon. Hist. Parm.*, V. 246; *Stat. Potest. Pistor.* (ed. Zdekauer), p. 17.

⁵ *Stat. Com. Vicen.* (ed. F. Lampertico), p. 80; *Discorso sulle Governo di Firenze* in Capponi, *St. di Firenze*, I. 557.

Just when and where the ballot was first used in northern Italy, how it came to be revived, and whether it was first used in deliberative or electoral assemblies, cannot be stated with entire certainty. Probably it was first used in deliberative voting and later was adopted for use in elections. In support of this probability several arguments may be advanced. In the first place, the use of the word ballot would seem to support this contention. The word means originally simply a small ball; these balls, as we shall see shortly, were commonly beans, white ones to signify affirmation, black ones to signify negation. Now it is scarcely probable that beans would have been decided upon for use in elections where distinctions between candidates were to be made, while it is entirely conceivable that they should have been adopted for use in deliberative voting. In the second place the earliest cases of election by ballot, as we shall see shortly, approximated very closely to the election by lot. The ballot and the ballot-box having been introduced for use in deliberative voting, what was more natural than that the assembly when sitting for the election of magistrates should appropriate the very convenient machinery for casting lots? Finally, the first definite reference to the use of the ballot in legislative proceedings antedates the first reference to its use in elections by almost twenty years.

It is probable that the use of the ballot in deliberative voting was revived some time in the first half of the thirteenth century. As early as 1246 the statutes of Brescia prescribe the vote by ballot in certain cases and content themselves with simply mentioning the process without describing it further.¹ From this time on the statutes of Brescia are full of references to the ballot, though never to the ballot in use at elections.² What is here referred to merely by name, we find fully described in other places. In the statutes of Vicenza, codified in 1264, there is a decree which provides that balloting shall take place as follows: All propositions placed before the Greater Council and the Council of Forty shall be decided by the use of the ballot. The councillors are required to advance one at a time and deposit their ballots with care, so that no one shall see how they have voted.³ When we have as much information as

¹ . . . "quod non fatiet expensas aliquas de avero comunis, nisi secundum quod per consilium comunis Brixie reformatum cum busolis et ballotis provisum et dispositum fuerit . . . Edictum fuit hoc capitulum currentibus millesimo ducentesimo quadagesimo sexto" . . . *Stat. Com. Brix.*, in *Mon. Hist. Patr.*, LL. II. 1584 (166-167).

² See, for instance, *Stat. Com. Brix.*, as above, pp. 1584 (167), 1584 (115), 1597, etc.

³ " . . . ballotas sibi datas in busolis in quibus voluerint taliter deponant quod nemo possit perpendere manum in singulo imponentes." *Stat. Vicen.* (ed. F. Lampertico), p. 72.

is here given, we have all that is really vital; the two great desiderata of all regulations about voting were order and secrecy, and these the present regulations provide for. From other sources we may gather information about the process of voting, the character of the ballots used, the arrangements for depositing the votes, for counting the ballots, and other details. Thus in a decree of 1279 in Brescia we get a most minute description of the procedure. The decree first prohibits the use of the rising vote; it then enacts that the chairman shall put the question and see that all the voters are provided with ballots. He must then instruct them as to the position of the boxes and warn them to exercise due care in casting their votes. All the paraphernalia must, according to the decree, be constructed on a particular model. The tellers are to be chosen from the household of the *Podestà*. They receive their instructions to be particularly careful and alert against fraud, to watch over the distributing, depositing and counting of the ballots, to see that the councillors do not meddle in any way with the boxes.¹ Other descriptions may be found in the statutes of Ivrea² and in the *Discorso sulle Governo di Firenze*.³ As to the character of the ballots used, in most cities these were black and white beans,⁴ in one city at least, Florence, the ballots seem to have been made of lead.⁵

Turning now to the subject of elections by ballot, a series of questions are presented to us. Just how early the election by ballot occurs is difficult to determine. Stray references to what may have been elections are found in the early years of the century. Thus in a chronicle of Venice, under the year 1204, we have the following statement concerning the election of an emperor of Constantinople: "Habita civitate XII eligendi pariter electi, dum de idoneori ad imperium scrutinium agerunt."⁶ Now the word "scrutinium," as we shall see, was later regularly used to describe secret elections, and if the chronicle were entirely reliable we should be justified in supposing that the Venetians, who were the prime movers in this election of an emperor in the year 1204, knew and used the ballot as early as the beginning of the thirteenth century. But since Dandolo, the author of the chronicle, wrote a century and a half after this event and at a time when the ballot was already well known in Venice, and since the contemporary writers make no mention of the

¹ *Stat. Com. Brix.*, in *Mon. Hist. Patr.*, LL. II. 1584 (167-168).

² *Stat. Com. Epor.*, in *Mon. Hist. Patr.*, LL. I. 1105.

³ *Discorso*, etc., in Capponi, *Storia di Firenze*, I. 557-558.

⁴ See, for instance, *Stat. Pistor.* (ed. Zdekauer), I. li.; *Stat. Com. Parm.* in *Mon. Hist. Parm.*, II. 2, 52, 54, etc.; *Stat. Epor.*, in *Mon. Hist. Patr.*, I. 7, 1105.

⁵ Gherardi, *Consulte di Firenze*, introd., p. xiii.

⁶ Danduli *Chronicon*, in Muratori, *Script. Rerum Ital.*, XII. 330.

process of election except to say that it took place behind closed doors, we must hesitate long before accepting this as a case of election by ballot. Again, in Milan in 1215, a document was drawn up in which occur these words: "Item statuo quod officiales eligantur ad lapidem more solito."¹

The words "ad lapidem," in view of the regular form used in describing elections ("ad brevia," "ad levandum et sedendum," "ad scrutinium," etc.) seem at first to indicate that this was to be an election by ballot in which stones or pebbles were to be used. Reasoning from this analogy, the editor of Corio's history of Milan interprets this passage to refer to an election by ballot;² but more careful study by another though earlier historian, Giulini, reveals that the phrase simply refers to "The Stone," a sort of rostrum in the market-place at Milan.³ By the middle of the thirteenth century, however, we begin to come upon references which are much more trustworthy and definite. Under the year 1252, a chronicler of the Bolognese district, who wrote toward the end of the thirteenth century, records that Brancalone del Andalo was elected *Senator* of Rome "ad scrutinium."⁴ Whether this phrase refers to the regular form of the ballot known later in the century or not, is, after all, not of the highest importance. In all probability, the election here described, which was an extraordinary one,⁵ was accomplished by some extraordinary form of procedure. We know from the statutes of Bologna that in the middle years of this century the regular form of election was still the lot; but it is possible that on this occasion the Bolognese council adopted some form of procedure in which special care was taken to ascertain the results of the election, or they may even have gone so far as to adopt for the time being the papal system of election, which was known regularly as the *scrutinium*.

Of papal elections in the thirteenth century a few more words may be said here. Since the beginning of the century, even before the papal conclave had come into existence, the cardinals, on the death of a pope, were in the habit of meeting together for the election of a new bishop of Rome. The first step in this process was the election of three tellers (*scrutatores*) and three tellers for the tellers (*scrutatores scrutatorum*). The three tellers then wrote down

¹ Corio, *Storia di Milano* (edited by E. Magri, 1855-1857), I. 353.

² Corio, *Storia di Milano*, I. 375.

³ Giulini, *Memorie, etc., di Milano* (edited by M. Fabi, 1854-1857), IV. 223-224, 315-317.

⁴ "Et tunc in general consilio communis Bononie ad scrutinium electus fuit D. Brancaloneus de Andalo." Cantinelli, *Chron.*, in Muratori (*Mittarelli*), 235, 236.

⁵ For more details of the election see page 8, *supra*.

on tablets the name or names of the candidates whom they wished to vote for, and passed them to their tellers who must keep the names secret. Having voted themselves, the tellers took their places and invited the other cardinals to vote. Each cardinal followed the practice just described, no ballot being revealed till the whole body had voted. Then the tellers opened the ballots and read the names of the cardinals voting and the candidates whom they had voted for. The results were tabulated on tally-sheets, and if some candidate had received a two-thirds vote he was declared elected. If no one had received the required number of votes the process had to be repeated till two-thirds of the college were agreed on one candidate.¹

The ordinance of 1268, by which the election of the Doge of Venice was put upon a new basis,² is cited in most works, especially by writers outside of Italy, as the earliest case of election by ballot in modern Europe. The reason for this is that in Venice the secret election continued down through the centuries, whereas in many of the communes its use was merely tentative and died out in some cases almost as soon as it was introduced. That the ballot was in use before 1268 is, however, indisputable. In the code of Vicenza for 1264 the election by ballot occupies a regular and well defined place and gives every evidence of having been in use for at least several years previous to the date of the code. The details of procedure as set forth in that code are not entirely clear; we are, nevertheless, sure that the election was a mixture of the lot and the ballot, in which the two processes are not exactly distinguished. Thus in the election of the Council of Elders (*Anziani*), the statute provides that there shall be twelve elders elected by two different processes. First, each of the masters of the eight guilds was to submit in writing to the Council of Forty the names of four good and true men from each guild, from whom eight, one from each guild, were to be chosen, "facto partito cum busolis ad ballotas." Second, eight electors were to be chosen by the council by lot, two for each quarter; these electors selected four worthy men from each quarter, and finally of these that one from each quarter was to be elder, "qui plures ballotas habuerit . . . facto partito modo predicto in

¹ This process is described in Gaetano, *Ordo Romanus*, c. II.—VII. in Mabillon, *Museum Italicum*, II. 247–250. For modern works on the subject see above, page 14, note 1.

² A description of this new form of election may be found in any of the histories of Venice; see, for instance, Daru, *Histoire de Venise*, I. 424 ff.; Romanin, *Storia Documentata di Venezia*, II. 289 ff. The main idea of the decree seems to have been to introduce a system of election so complicated that all possibility of corruption should be eliminated. Between the choice by lot of the first thirty electors and the final choice of the Doge, by ballot, nine stages had to be accomplished.

suprascripto consilio et Gastaldis.”¹ The process of taking the vote is not described here, but in another statute of the same code some additional light is thrown upon this feature of the system. In the election of the chief magistrate of the city, the names of five candidates for the office of elector chosen from one of the quarters of the city were to be placed in five boxes, one name in each box: these boxes were to be carried around the assembly and ballots deposited in them; and the candidates whose names were in the two boxes having the largest number of ballots were to be declared elected. This process was to be repeated for each of the four quarters of the city and the eight men thus chosen were to act as electors of the *Podestà*.² From this description we are unable to determine definitely whether the members of the council knew what name was contained in each of the five boxes or merely cast their ballots haphazard; in other words whether the ballot was conscious or merely a matter of chance. From indications in the statutes of Padua, the immediate neighbor of Vicenza, we are enabled to fill this gap in our understanding of the process. In Padua, instead of passing the boxes around, they were set up upon a sort of rostrum, to which the members came in order to vote. The boxes were guarded by four tellers, who were strictly forbidden to talk to the voters except for the purpose of indicating in which box the name of a certain candidate had been placed.³ This decree, passed about 1269 and reinforced by several others of about the same date,⁴ serves to bring clearly to knowledge the system in use. Only one thing further could be done to keep the election as secret as possible, and that is to withhold the names of the candidates until the voting had actually begun. This was done in at least one town: in Parma in the election of the treasurers, the nominating committee was required to submit the names of candidates in writing; these names were to be kept secret until the election was about to begin, when they were published and the balloting began at once.⁵

The new system, once introduced, spread rapidly, as did all institutions in northern Italy, and by the end of the thirteenth century it had been adopted by nearly all the communes. The burghers seem, nevertheless, to have been able to keep up with the constitution-makers, for it is not long before stringent rules against such malpractices as interfering with the voters, repeating, and stuffing

¹ *Stat. Com. Vicen.* (ed. F. Lampertico), pp. 72-73.

² *Stat. Com. Vicen.* (ed. F. Lampertico), p. 80.

³ “. . . qui nichil dicere debeant nisi nominando buxolis cujuslibet potestatis.” *Statuti del Comune di Padova* (ed. A. Gloria), p. 7.

⁴ *Stat. di Padova*, pp. 108, 109.

⁵ *Stat. Com. Parm., Mon. Hist. Parm.*, II. 44.

the ballot-box had to be made.¹ Whether the communes would have found remedies for these evils we cannot say; the beginning of the fourteenth century marks the decadence of communal life, and with the disappearance of the freedom of the cities the problem of purity in elections also disappears.

Thus from a short study of the history of these communes we may learn that as far back as the thirteenth century men coped with many of the evils that we are fighting; and we are bound to admit that they settled many of them with no small credit to themselves.

ARTHUR M. WOLFSON.

¹ See for instance: *Stat. Com. Brix.*, in *Mon. Hist. Patr.*, LL. II. 1584 (167-168); *Stat. Com. Parm.*, in *Mon. Hist. Parm.*, II. 59.